



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman  
ANDY TOBIN  
BOYD DUNN  
SANDRA D. KENNEDY  
JUSTIN OLSON

Arizona Corporation Commission

DOCKETED

MAR 13 2019

DOCKETED BY

In the matter of

Pacific Capital Enterprises LLC, a Delaware  
limited liability company,

Superior Diamond Management LLC, a  
Delaware limited liability company,

Michael Barry Eckerman, and Tonya  
Eckerman, husband and wife,

Venessa R. Sandoval, and Ashley Abbema,  
husband and wife,

Respondents.

DOCKET NO. S-21035A-17-0391

DECISION NO. 77117

**ORDER TO CEASE AND DESIST, ORDER  
FOR RESTITUTION, ORDER FOR  
ADMINISTRATIVE PENALTIES AND  
CONSENT TO SAME**

**BY: RESPONDENTS PACIFIC CAPITAL  
ENTERPRISES LLC, SUPERIOR DIAMOND  
MANAGEMENT LLC, MICHAEL BARRY  
ECKERMAN, AND TONYA ECKERMAN**

Respondents Pacific Capital Enterprises LLC, Superior Diamond Management LLC, Michael Barry Eckerman, and Tonya Eckerman ("Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease And Desist, Order for Restitution, Order for Administrative Penalties And Consent to Same ("Order"). Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding and any future proceeding in which the Commission is a party the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

**I.****FINDINGS OF FACT**

1. Pacific Capital Enterprises LLC ("Pacific") is a limited liability company organized under the laws of the state of Delaware in March 2015. Superior Diamond Management LLC has been the manager of Pacific since at least March 30, 2017.

2. Superior Diamond Management LLC ("Diamond") is a limited liability company organized under the laws of the state of Delaware in March 2017. Michael Barry Eckerman has been the manager of Diamond since at least March 30, 2017.

3. Michael Barry Eckerman ("Eckerman") has been a married man and a resident of the state of Arizona since at least January 2017.

4. From at least March 30, 2017, to the present, Tonya Eckerman ("Respondent Spouses") has been the spouse of Respondent Eckerman.

5. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

6. At all relevant times, Eckerman has been acting for his own benefit and for the benefit or in furtherance of the marital community.

7. Pacific rents residential real estate for vacation rentals, event rentals, corporate rentals, or other rentals. Pacific's offices were located in Scottsdale, Arizona from at least March 30, 2017, to at least approximately March 30, 2018.

8. From at least April 5, 2017, to approximately March 30, 2018, Pacific Capital offered investment contracts in the form of limited liability company units ("LLC Units") to Arizona investors ("Investors"). Investors are entitled to a 10% annual return on their LLC Unit investments until Pacific redeems the LLC Units. Pacific raised \$1,180,606 from ten Investors. Eckerman solicited at least three of these investments. Eckerman also signed the subscription agreements for at least nine Investors.

9. Pacific's Investors received a private placement memorandum ("PPM") describing Pacific's business and management, but not all Investors received the PPM before investing.

10. Pacific and Eckerman each omitted to at least one Investor who did not receive the PPM before investing that Eckerman was subject to a Temporary Order to Cease and Desist, which alleged that Eckerman had violated the Arizona Securities Act.

11. Pacific and Eckerman each told at least one Investor that Pacific was profitable at the time he invested.

12. Actually, Pacific was not profitable at that time.

13. Pacific executed a real estate deal on May 5, 2017, with two affiliate companies controlled by Eckerman ("Affiliates") to purchase their interest in an agreement for sale for a house in Paradise Valley ("Option Rights").

14. The Affiliates purchased the interest in the agreement for sale for \$2,750,000. The Affiliates sold the interest in the agreement for sale to Pacific nine months later for \$5,367,500.

15. Pacific omitted to the Investors the prices paid by the Affiliates and Pacific for the interest in the agreement for sale. Respondents agree this omission was material to Investors.

## II.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. Respondents Pacific and Eckerman offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(16), 44-1801(22), and 44-1801(27).

3. Respondents Pacific and Eckerman violated A.R.S. § 44-1991(A)(2).

4. Respondents Pacific, Diamond, and Eckerman's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

5. Respondents Pacific, Diamond, and Eckerman's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

6. Respondents Pacific, Diamond, and Eckerman's conduct is grounds for an order of administrative penalties pursuant to A.R.S. § 44-2036.

7. Respondent Eckerman acted for the benefit of the marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the community.

8. Respondents Diamond and Eckerman directly or indirectly controlled Pacific within the meaning of A.R.S. § 44-1999. Therefore, Diamond and Eckerman are jointly and severally liable under A.R.S. § 44-1999 to the same extent as Pacific for its violations of A.R.S. § 44-1991.

### III.

## ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents Pacific, Diamond, and Eckerman and any of their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondents Pacific, Diamond, and Eckerman comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents Pacific, Diamond, and Eckerman, individually, and the marital community of Respondent Eckerman, jointly and severally shall pay restitution to the Commission in the principal amount of \$1,115,043.24 as a result of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. Any restitution payment received from Venessa R. Sandoval for this matter will also be credited to the restitution obligation of Respondents Pacific, Diamond, and Eckerman. Any principal amount outstanding shall accrue interest at the rate

1 of ten percent per annum from the date of purchase until the date of this order. Interest in the amount  
2 of \$161,829.73 has accrued from the date of purchase to February 5, 2019.

3 IT IS FURTHER ORDERED that the restitution ordered in the preceding paragraph will  
4 accrue interest, as of the date of the Order, at the rate of the lesser of (i) ten percent per annum or (ii)  
5 at a rate per annum that is equal to one per cent plus the prime rate as published by the board of  
6 governors of the federal reserve system in statistical release H. 15 or any publication that may  
7 supersede it on the date that the judgment is entered.

8 The Commission shall disburse the funds on a pro-rata basis to investors shown on the records  
9 of the Commission. Any restitution funds that the Commission cannot disburse because an investor  
10 refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor  
11 because the investor is deceased shall be disbursed on a pro-rata basis to the remaining investors  
12 shown on the records of the Commission. Any funds that the Commission determines it is unable to  
13 or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

14 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents Pacific,  
15 Diamond, and Eckerman, individually, and the marital community of Respondent Eckerman, jointly  
16 and severally shall, pay an administrative penalty in the amount of \$50,000 as a result of the conduct  
17 set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this  
18 Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue  
19 interest as allowed by law.

20 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be  
21 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments  
22 shall be applied to the penalty obligation.

23 For purposes of this Order, a bankruptcy filing by a Respondent shall be an act of default by  
24 that Respondent. If Respondents do not comply with this Order, any outstanding balance may be  
25 deemed in default and shall be immediately due and payable.

1 IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the  
2 Commission may bring further legal proceedings against Respondents, including application to the  
3 superior court for an order of contempt.

4 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this  
5 Order shall be deemed binding against any Respondent under this Docket Number who has not  
6 consented to the entry of this Order.

7 ...

8 ...

9 ...

10 ...

11 ...

12 ...

13 ...

14 ...

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

1 IT IS FURTHER ORDERED that this Order shall become effective immediately.

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

3  
4   
5 CHAIRMAN BURNS

  
6 COMMISSIONER DUNN


7   
8 COMMISSIONER TOBIN

  
9 COMMISSIONER KENNEDY

  
10 COMMISSIONER OLSON



IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT,  
Executive Director of the Arizona Corporation Commission,  
have hereunto set my hand and caused the official seal of the  
Commission to be affixed at the Capitol, in the City of Phoenix,  
this 13<sup>th</sup> day of March, 2019.

16  
17   
18 MATTHEW J. NEUBERT  
19 EXECUTIVE DIRECTOR

20  
21  
22  
23  
24  
25  
26

DISSENT

DISSENT

This document is available in alternative formats by contacting Kacie Cannon, ADA Coordinator,  
voice phone number (602) 542-3931, e-mail [kcannon@azcc.gov](mailto:kcannon@azcc.gov).

(PSK)



**CONSENT TO ENTRY OF ORDER**

1  
2           1.       Respondents Pacific Capital Enterprises LLC, Superior Diamond Management LLC,  
3 Michael Barry Eckerman, and Tonya Eckerman ("Respondents") admit the jurisdiction of the  
4 Commission over the subject matter of this proceeding. Respondents acknowledge that they have  
5 been fully advised of their right to a hearing to present evidence and call witnesses and Respondents  
6 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other  
7 rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona  
8 Administrative Code. Respondents acknowledge that this Order to Cease And Desist, Order for  
9 Restitution, Order for Administrative Penalties And Consent to Same ("Order") constitutes a valid  
10 final order of the Commission.

11           2.       Respondents knowingly and voluntarily waive any right under Article 12 of the  
12 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting  
13 from the entry of this Order.

14           3.       Respondents acknowledge and agree that this Order is entered into freely and  
15 voluntarily and that no promise was made or coercion used to induce such entry.

16           4.       Respondents have been represented by an attorney in this matter, Respondents have  
17 reviewed this order with their attorney, Michael J. LaVelle of LaVelle & Lavelle, PLC, and  
18 understand all terms it contains. Respondents acknowledge that their attorney has apprised them of  
19 their rights regarding any conflicts of interest arising from dual representation. Respondents  
20 acknowledge that they have each given their informed consent to such representation.

21           5.       Respondents admit only for purposes of this proceeding and any other future  
22 proceeding in which the Commission is a party the Findings of Fact and Conclusions of Law  
23 contained in this Order. Respondents agree that Respondents shall not contest the validity of the  
24 Findings of Fact and Conclusions of Law contained in this Order or in any future proceeding in which  
25 the Commission is a party.  
26



1           6.     The Respondents further agree that they shall not deny or contest the Findings of Fact  
2 and Conclusions of Law contained in this Order in any future: (a) bankruptcy proceeding, or (b)  
3 future non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)").  
4 They further agree that in any such proceedings, the Findings of Fact and Conclusions of Law  
5 contained in this Order may be taken as true and correct and that this Order shall collaterally estop  
6 them from re-litigating with the Commission or any other state agency, in any forum, the accuracy  
7 of the Findings of Fact and Conclusions of Law contained in this Order. In the event that any  
8 Respondent pursues bankruptcy protection in the future, the Respondents further agree that in such  
9 bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

10           A.     The obligations incurred as a result of this Order are a result of the conduct set forth  
11 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona  
12 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

13           B.     This Order constitutes a judgment, order, consent order, or decree entered in a state  
14 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by  
15 Respondents pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty,  
16 citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by  
17 Respondents pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

18           7.     By consenting to the entry of this Order, Respondents agree not to take any action or  
19 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
20 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual  
21 basis.

22           8.     While this Order settles this administrative matter between Respondents and the  
23 Commission, Respondents understand that this Order does not preclude the Commission from  
24 instituting other administrative or civil proceedings based on violations that are not addressed by this  
25 Order.  
26

1           9.       Respondents understand that this Order does not preclude the Commission from  
2 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
3 that may be related to the matters addressed by this Order.

4           10.       Respondents understand that this Order does not preclude any other agency or officer  
5 of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal  
6 proceedings that may be related to matters addressed by this Order.

7           11.       Respondent Michael Barry Eckerman agrees that he will not apply to the state of  
8 Arizona for registration as a securities dealer or salesman or for licensure as an investment adviser  
9 or investment adviser representative until such time as all restitution and penalties under this Order  
10 are paid in full.

11           12.       Respondent Michael Barry Eckerman agrees that he will not exercise any control over  
12 any entity that offers or sells securities or provides investment advisory services within or from  
13 Arizona until such time as all restitution and penalties under this Order are paid in full.

14           13.       Respondent Michael Barry Eckerman and Respondent Tonya Eckerman acknowledge  
15 that any restitution or penalties imposed by this Order are obligations of the Respondent Eckerman  
16 as well as the marital community.

17           14.       Respondents consent to the entry of this Order and agree to be fully bound by its terms  
18 and conditions.

19           15.       Respondents acknowledge and understand that if Respondents fail to comply with the  
20 provisions of the order and this consent, the Commission may bring further legal proceedings against  
21 Respondents, including application to the superior court for an order of contempt.

22           16.       Respondents understand that default shall render Respondents liable to the  
23 Commission for its costs of collection, including reasonable attorneys' fees and interest at the  
24 maximum legal rate.

25           17.       Respondents agree and understand that if Respondents fail to make any payment as  
26 required in the Order, any outstanding balance shall be in default and shall be immediately due and

payable without notice or demand. Respondents agree and understand that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

18. Respondent Superior Diamond Management LLC represents that it is the manager of Pacific Capital Enterprises LLC and has been authorized by Pacific Capital Enterprises LLC to enter into this Order for and on behalf of it.

19. Respondent Michael Barry Eckerman represents that he is the manager of Superior Diamond Management LLC and has been authorized by Superior Diamond Management LLC to enter into this Order for and on behalf of Superior Diamond Management LLC and Pacific Capital Enterprises LLC.

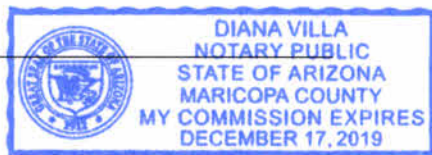
  
\_\_\_\_\_  
(Michael Barry Eckerman)

STATE OF ARIZONA       )  
County of Maricopa       ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 28th day of January, 2019.

  
\_\_\_\_\_  
NOTARY PUBLIC

My commission expires:



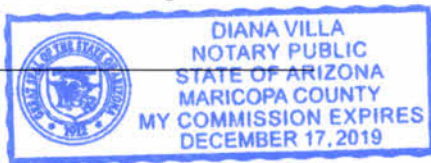
  
(Tonya Eckerman)

STATE OF ARIZONA )  
County of Maricopa ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 28<sup>th</sup> day of January, 2019.

  
NOTARY PUBLIC

My commission expires:



Superior Diamond Management LLC



By Michael Barry Eckerman

Its Manager

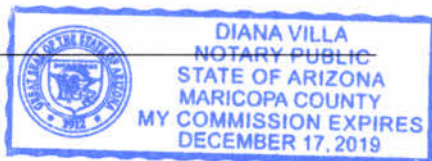
STATE OF ARIZONA )  
County of Maricopa ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 28<sup>th</sup> day of January, 2019.

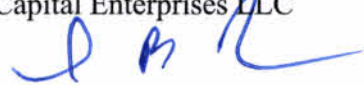


NOTARY PUBLIC

My commission expires:



Pacific Capital Enterprises LLC



By Michael Barry Eckerman

Its Manager's Manager

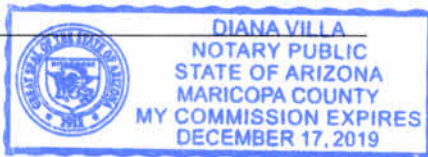
STATE OF ARIZONA )  
County of Maricopa ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 28<sup>th</sup> day of January, 2019.



NOTARY PUBLIC

My commission expires:



SERVICE LIST FOR: In re: Pacific Capital Enterprises LLC et al.

Michael J. LaVelle  
Matthew K. LaVelle  
LaVelle & LaVelle, PLC  
2728 N. 24<sup>th</sup> Street, Suite A  
Phoenix, AZ 850008  
Attorney for Respondents



1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2

3 COMMISSIONERS

4 ROBERT "BOB" BURNS - Chairman  
 5 ANDY TOBIN  
 6 BOYD DUNN  
 SANDRA D. KENNEDY  
 JUSTIN OLSON

7 In the matter of:

DOCKET NO. S-21035A-17-0391

8 Pacific Capital Enterprises LLC, a Delaware  
 9 limited liability company,

**CERTIFICATION OF SERVICE OF  
 PROPOSED OPEN MEETING AGENDA  
 ITEM**

10 Superior Diamond Management LLC, a  
 Delaware limited liability company,

11 Michael Barry Eckerman, and Tonya Eckerman,  
 12 husband and wife,

13 Venessa R. Sandoval, and Ashley Abbema,  
 husband and wife,

14 Respondents.  
 15

16 On this 26 day of February, 2019, the foregoing document was filed with Docket Control  
 17 as an Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and  
 18 Consent to Same by: Respondents Pacific Capital Enterprises LLC, Superior Diamond Management  
 19 LLC, Michael Barry Eckerman, and Tonya Eckerman, and copies of the foregoing were mailed on  
 20 behalf of the Securities Division to the following who have not consented to email service. On this  
 21 date or as soon as possible thereafter, the Commission's eDocket program will automatically email  
 22 a link to the foregoing to the following who have consented to email service.

23 ...


24 ...

25 ...

26 ...



1 Michael J. LaVelle  
2 Matthew K. LaVelle  
3 LaVelle & LaVelle, PLC  
4 5080 N. 40<sup>th</sup> Street Suite 455  
5 Phoenix, AZ 85018  
6 Attorneys for Respondents  
7 **Consented to Service by Email**

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
By:   
Emie R. Bridges, Executive Assistant